Significant Expansion of $600 Billion Main Street Loan Programs for Small- and Medium-Sized Businesses

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On April 30, 2020, the Federal Reserve (the Fed) announced the expansion in scope and eligibility of its forthcoming Main Street Lending Program (MSLP). The expansion comes in response to public comment on the MSLP as initially proposed and is designed to further spur the flow of credit to small and medium-sized businesses in response to the COVID-19 pandemic and associated economic hardship. A program start date has not yet been announced and future modifications and expansions are possible.

As originally announced on April 9, the MSLP included two Main Street Lending Facilities, one for new loans (Main Street New Loan Facility (MSNLF)) and the second for expanded loans (Main Street Expanded Loan Facility (MSELF)), as part of a suite of funding measures designed to support the economy. The April 30 action adds a third facility (the Main Street Priority Loan Facility (MSPLF)) with increased risk sharing by lenders for borrowers with greater leverage. Combined, the total Main Street loan facility – authorized under Section 13(3) of the Federal Reserve Act – will enable up to $600 billion in new financing for small- and medium-sized businesses. The Fed has not ruled out increasing the program's size in the future based on the needs of eligible borrowers.

Other major modifications in the Fed's program expansion include an increase in the size of eligible businesses, raising previous employee limits from 10,000 to 15,000 and doubling previous annual revenue limits from $2.5 billion to $5 billion. (A business must meet one of the two standards, employees or revenue, but not both.) The Fed also announced it would apply Small Business Administration "affiliation" standards to aggregate the revenue or number of employees of businesses under common ownership and control, to determine eligibility discussed in more detail below. Finally, the Fed modified minimum and maximum loan sizes (new sizes in table below) for the previously-announced facilities. The program will be administered by the Federal Reserve Bank of Boston.

In creating the Main Street Lending Program, the Fed elected the more flexible option of the two it had available under the Coronavirus Aid, Relief, Economic Security Act ("CARES Act") to provide support for small and mid-sized businesses. The Main Street Lending facilities were implemented pursuant to Title IV of the CARES Act and are designed to "help companies that were in sound financial condition prior to the onset of the COVID-19 pandemic maintain their operations and payroll until conditions normalize." This is distinct from the CARES Act Title I Paycheck Protection Program ("PPP") for small businesses, certain small non-profit organizations, and the self-employed.

How Will The Main Street Lending Program Be Funded?

The Fed plans to lend funds on a recourse basis to a single special purchase vehicle (SPV) that will be capitalized by $75 billion of equity capital from the Treasury. The SPV will use the proceeds of the Treasury equity investment and loans made from the Fed to purchase up to $600 billion of eligible loans. The program will be funded through September 30, 2020, unless extended.

The loans made by the Fed to the SPV will be secured by the portfolio of present and future eligible loans held by the SPV. Notably, however, and in contrast to the Fed's liquidity program for the purchase of loans under the Paycheck Protection Program, for both the MSNLF and the MSELF, the Fed will only purchase 95% of the aggregate principal amount of loans made by eligible lenders, requiring lenders to retain 5% of the risk of the loan on their own balance sheet. For the newly-created MSPLF, eligible lenders are required to retain a 15% stake in the loan.

Who Are Eligible Lenders?

Eligible lenders for the Main Street facilities include U.S. insured depository institutions, U.S. bank holding companies, and U.S. savings and loan holding companies. In its April 30 modifications, the Fed expanded the program’s list of eligible lenders to include U.S. branches or agencies of foreign banks as well as U.S. intermediate holding companies of foreign banking organizations. Generally, a mid-sized business should be able to reach out to the bank at which it has a pre-existing lending relationship regarding a Main Street loan.

Who Are Eligible Borrowers?

The April 30 facility revisions extended the program to larger and potentially more highly-leveraged businesses. Eligible borrowers now include businesses with up to 15,000 employees or up to $5 billion in 2019 annual revenues. Notably, a borrower’s size now must be determined by aggregating its revenue or employees across affiliates in accordance with Small Business Administration standards. Under 13 CFR 121.301(f), entities are affiliated if one “controls or has the power to control the other, or a third party or parties controls or has the power to control both.” The power to control can arise by virtue of common ownership; stock options, convertible securities, and agreements to merge; common management; and identity of interest. An April 30 MSLP Frequently Asked Questions document provides additional information on calculating 2019 revenues and employees for the purposes of determining eligibility. The borrower must also be organized in the United States and have “significant operations” and a majority of employees based in the United States. Eligible borrowers must also be financially sound and must have been in existence since March 13, 2020.

The Fed defines “business” as a legally-formed entity that is organized for profit as a partnership; a limited liability company; a corporation; an association; a trust; a cooperative; a joint venture with no more than 49 percent participation by foreign business entities; or a tribal business concern. The Fed will follow SBA’s definition of ineligible businesses set forth at 13 CFR 120.110(b)-(j) and (m)-(s), including as clarified for the purposes of the PPP (e.g., passive businesses and lenders are not eligible).

In two significant changes, under the MSELF, a borrower may now “upsize” a revolving credit facility with an eligible lender, as well as a term loan. In addition, under the MSPLF, a borrower may now refinance a pre-existing loan with another lender into a Main Street loan.

Going forward, the Federal Reserve and the Treasury Department will evaluate the feasibility of adjusting borrower eligibility criteria and loan eligibility metrics for asset-based borrowers as well as for nonprofit organizations.

What Are a Main Street Loan's Principal Terms?

Main Street loan options and terms:

Type	**New (MSNLF)** (4/30 MSNLF term sheet)	**Priority (MSPLF)** (4/30 MSPLF term sheet)	**Expanded (MSELF)** (4/30 MSELF term sheet)
Term	4 years	4 years	4 years
Minimum Loan Size	$500,000	$500,000	$10,000,000
Maximum Loan Size	Lesser of $25M or 4x 2019 adjusted EBITDA (calculated as required by term sheet)	Lesser of $25M or 6x 2019 adjusted EBITDA (calculated as required by term sheet)	Lesser of $200M, 35% of outstanding and undrawn available debt, or 6x 2019 adjusted EBITDA (calculated as required by term sheet)
Risk Retention	5%	15%	5%
Payment	Year 1: Deferred Years 2-4: 33.33% each year	Year 1: Deferred Year 2: 15% Year 3: 15% Year 4: 70%	Year 1: Deferred Year 2: 15% Year 3: 15% Year 4: 70%
Rate	LIBOR + 3%	LIBOR + 3%	LIBOR + 3%
Transaction Fees	Lender (to SPV): 100 basis points of the principal amount at time of origination (may pass on to borrower) Borrower (to lender): up to 100 basis points of the principal amount at the time of origination; at lender's discretion	Lender (to SPV): 100 basis points of the principal amount at time of origination (may pass on to borrower) Borrower (to lender): up to 100 basis points of the principal amount at the time of origination; at lender's discretion	Lender (to SPV): 75 basis points of the principal amount at the time of "upsizing" (may pass on to borrower) Borrower (to lender): up to 75 basis points of the principal amount at the time of upsizing; at lender's discretion
Collateral	Not required	Not required	Must be secured if the underlying loan is secured
Prepayment	No penalty	No penalty	No penalty
Loan Forgiveness	No	No	No
Other		Can be used in part to refinance from another lender to a Main Street lender	Can be used to add onto a revolving line of credit as well as a term loan; lender must have some, and then retain at least some of, its interest in the underlying loan

A borrower can only participate in one Main Street facility, but can receive more than one loan under that facility, pursuant to loan maximums. Unlike the PPP, the lender has the option for the loans to be secured or unsecured, and recourse is allowed to the borrower. A lender will also underwrite a loan based on its own standards, and apply "industry-specific expertise and underwriting standards to best measure a borrower’s income.” The MSLP term sheets contain minimum program requirements and additional underwriting standards will be applied by lenders.

How Does the Main Street Lending Program Fit into the Federal COVID-19 Relief Efforts?

The much-anticipated Main Street Lending Program fills an important gap in the Treasury Department’s relief program to U.S. businesses. Launched a week prior to the Main Street Lending Facilities, the Paycheck Protection Program is limited to small businesses and non-profits (those entities, when combined with their “affiliates,” have less than the greater of 500 employees or the Small Business Administration size standard for their industry classification), and the self-employed. The PPP has proven enormously popular and is projected to run out of lending authority long before its June 30, 2020 sunset and despite an additional $310 billion infusion after the initial $349 billion was exhausted.

What Business and Operational Commitments do Main Street Borrowers Need to Make?

Like the PPP program, Main Street Lending Program participants will be required to execute a series of representations and certifications established by the Federal government. In large part, these attestations are designed to ensure prompt repayment of the Main Street loans and to not disadvantage lenders that choose to participate in the program:

- The borrower must agree not to use loan proceeds to repay other loan balances as well as other debt of equal or lower priority, with the exception of mandatory principal payments, until after the borrower has repaid the Main Street loan in full;
- The borrower must represent that it will not seek to cancel or reduce any of its outstanding lines of credit with the Main Street lender or any other lender;
- The borrower must certify that it has a reasonable basis to believe that it has the ability to meet its financial obligations for at least 90 days from the date of origination / upsizing and does not expect to file for bankruptcy during that time period;
- The borrower must certify that it meets the EBITDA leverage limit described above;
- The borrower must certify that it will follow certain compensation, stock repurchase and capital distribution restrictions contained in the CARES Act, namely not to repurchase publicly traded securities until the date 12 months after the loan is repaid, except as required by a pre-existing contract; not to pay dividends or make other capital distributions with respect to the borrower’s common stock for that same period; and to agree to compensation and severance package limits for highly compensated officers or employees; and
- Conflict of interest provisions also apply to preclude Administration officials, Members of Congress, and their families from participating in the program.

In a change from the initial MSLP facility terms, a borrower is not required to certify that it will “make reasonable efforts to maintain its payroll and retain its employees” during the term of the loan. However, eligible borrowers should make “commercially reasonable efforts to retain employees” during the term of the loan. Commercially reasonable efforts are defined in the FAQ as “good faith efforts, in light of its capacities, the economic environment, its available resources, and the business need for labor." A borrower that has already laid-off or furloughed workers due to COVID-related disruptions can be eligible for a Main Street loan.

Additionally, each facility has a series of required lender certifications and covenants.

Kelley Drye has been closely monitoring the federal government response to the COVID-19 pandemic. Our goal is to help clients face current challenges and address questions that impact business operations as information becomes available to us. We have been providing up-to-date information including daily advisories, blog posts and frequent webinars about the legal and business implications related to the pandemic, all of which can be found on the firm's COVID-19 Resource Center.